

McNamara Declaration

Exhibit 38

September 06, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVIN G. NUNES,

PLAINTIFF,

-against-

Case No.:
22-cv-1633
(PKC)

NBCUNIVERSAL MEDIA, LLC,

DEFENDANT.

-----X

DATE: September 6, 2024

TIME: 10:00 a.m. EST

- CONFIDENTIAL ATTORNEYS' EYES ONLY -

REMOTE DEPOSITION of DEREK

HARVEY, taken by the Defendant, pursuant to
a Subpoena and to the Federal Rules of
Civil Procedure, held remotely via Zoom
Videoconference, before Suzanne Pastor, a
Notary Public of the State of New York.

1 understand him to actually be Victor
2 Shokin?

3 A. It seemed credible to me, but I
4 wasn't gonna bet my mortgage on it. But
5 seemed credible. He answered my questions
6 with what seemed to be solid answers.

7 But if you're well trained and
8 you're a prosecutor over there -- he had
9 knowledge about how our operations there at
10 the embassy worked and intersecting with
11 him. He had gotten an award from the
12 United States State Department for fighting
13 corruption. He had gotten all these
14 accolades from the U.S. government. And
15 then suddenly he was the worst guy over
16 there and needed to be fired because he
17 raided Burisma, and the vice president
18 happened to have a son that was getting
19 paid, what, \$82,000 a month from Burisma.
20 And Eric Ciaramello who worked on the vice
21 president's national security team during
22 that time period when he was vice president
23 handled the European portfolio to include
24 Ukraine. And he was the alleged
25 whistleblower for the Ukraine phone call.

1 It's all very convenient.

2 Q. At what point did Mr. Nunes
3 become aware of your conversations with
4 Mr. Parnas?

5 A. Probably early-mid February.

6 Q. Prior to your conversation with
7 Mr. Shokin?

8 A. Right.

9 Q. Did you brief Mr. Nunes on your
10 conversation with Shokin?

11 A. I think I did. I said I don't
12 think it's going anywhere.

13 Q. Were any Democratic members
14 aware of your conversation with Parnas when
15 they were occurring?

16 A. No.

17 Q. Was any Democratic staff aware
18 of your communications with Parnas when
19 they were occurring?

20 A. All the Republican staff
21 weren't aware.

22 MR. CHASE: Ali, why don't we
23 put up Exhibit 46, what we're going
24 to mark as Exhibit 46.

25 (Whereupon, WhatsApp Messages,

1 NBCU 1389 to 1408 was marked as
2 Harvey Exhibit 46 for identification
3 as of this date by the Reporter.)

4 Q. Mr. Harvey, I'm going to
5 represent to you that these are documents
6 containing the WhatsApp messages between
7 you and Mr. Parnas that we were just
8 referring to. We obtained these after they
9 were made public by the House Impeachment
10 Committee in January of 2020.

11 MR. CHASE: Ali, can you scroll
12 down so he can see generally.

13 Q. Do these look familiar to you?

14 A. I have to look at them. You're
15 going too fast. Because I don't -- I'm not
16 a user of WhatsApp, unless he asked me to
17 use it. And I'm not sure, I'd have to look
18 at these. Let me see.

19 Okay, that looks familiar,
20 "outside the Capitol Hill Club." Yeah, I
21 think he probably asked me to use WhatsApp.

22 Q. Do you have a sense of why he
23 would have asked you to use WhatsApp?

24 A. I think he fancied himself a --
25 it's more drama for him.

1 Q. Got it, got it.

2 MR. CHASE: Ali, if you'd go to
3 page 2.

4 Q. There's a text message here
5 that is from you. I'll read it to you just
6 so that you can -- here we go. It's dated
7 March 29, 2019 to Mr. Parnas. It says,
8 "Can we get materials? Sources at State
9 say that there was this push to spend U.S.
10 donor aid in Ukraine. It appears the U.S.
11 foreign aid to Ukraine nearly doubled from
12 fiscal year 15 to fiscal year 16 (around
13 280 million to 500 million). Their hunch
14 was that the money would get grafted by
15 Ukraine officials in exchange for money
16 then given to Clinton Foundation or other
17 social justice causes. The rumors the
18 Ukraine government liaised with Clinton
19 camp and FBI to dig up dirt on Manafort in
20 2016 are also in play. If the increase in
21 aid is accurate, then there's a thread to
22 pull. Look at TDY records to Kiev, cables
23 from DC to post, et al., audit donor aid to
24 Ukraine." Did I read that correctly?

25 A. Mm-hmm.

1 to you wouldn't be the proper venue? I
2 just want to get a better understanding of
3 that.

4 Mr. Harvey?

5 MR. CHASE: Let's go off the
6 record for a moment.

7 THE VIDEOGRAPHER: Going off
8 the record. The time is 12:35 p.m.
9 Eastern time.

10 (Whereupon, a lunch recess was
11 taken.)

12 THE VIDEOGRAPHER: The time is
13 1:16 p.m. Eastern time. We're back
14 on the record.

15 BY MR. CHASE:

16 Q. Mr. Harvey, during the break
17 did you speak with anyone?

18 A. No. Just my wife. I had some
19 chicken corn rice soup and my 8 year old
20 son.

21 Q. Sounds delicious.

22 A. They're not here. They're not
23 here. This is a separate location.
24 They're at my house, which is about
25 three-quarters of a mile from here.

1 Q. Got it.

2 A. We don't have internet out
3 here. This is the only place we could get
4 the internet.

5 Q. Ah, okay, I see. All right,
6 well, Mr. Harvey, we're going to pick up
7 where we left off.

8 MR. CHASE: Ali, if you could
9 load up those text messages again.
10 If you can go to page 5, Ali.

11 Q. So Mr. Harvey, you can see on
12 April 12, 2019 you text to Mr. Parnas
13 Solomon needs to get me the material, and
14 we need to set a time to Skype with your
15 four people.

16 What materials do you
17 understand to be referring to here? I
18 recognize this is about five years ago.

19 A. Yeah, there was supposed to
20 be -- he said he had Victor Shokin and
21 these folks, and I believe it had to do --
22 now, this is five years ago, but I think
23 there was something on Shokin in the
24 background there that Solomon may have had
25 or gotten from him. But I don't think I

1 ever got anything.

2 Q. And do you know who the four
3 people you were referring to in this text
4 were?

5 A. Two former prosecutors and
6 someone else who apparently was a
7 prosecutor and someone who had worked as a
8 Ukrainian, with NABU probably.

9 Q. And so moving along down the
10 chain, there's some more back and forth
11 about setting up Skype calls to conduct
12 interviews with Parnas' people. We don't
13 need to read through all of them, but I can
14 represent to you that's essentially what
15 they are.

16 But then on page 6, Ali, if you
17 can go there, there is an April 17, 2019
18 text message where you write to Mr. Parnas
19 that, "I have not received anything to
20 assist" and then note that you need more
21 time to prepare for the calls with these
22 individuals.

23 Do you recall what you were
24 expecting to receive that could assist you?

25 A. Just some more information

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1 about Shokin. And I was busy doing so many
2 other things that I had -- I was just
3 delaying because I had other stuff going
4 on.

5 Q. I see, I see.

6 A. I didn't want to just string
7 him along. I didn't have any -- I mean,
8 he -- I didn't know who some of these other
9 people were, so.

10 Q. Okay. Well, if you look at the
11 next text message from Mr. Parnas to you,
12 you can see that there's a small icon
13 there, it's like a thumbnail of an image.

14 A. Yes.

15 MR. CHASE: Ali, if you scroll
16 to page 18, you can see the full size
17 image of that. Is there a way to
18 scroll out so he can see the whole --
19 oh, there we go.

20 Q. So this appears to be a CV of
21 Ukrainian prosecutor Konstantin Kulyk. Are
22 you familiar with Konstantin Kulyk?

23 A. I heard the name. I'm not sure
24 if I open this all up, I read it just to
25 see that it's a bio of him.

1 Q. Do you know who Mr. Kulyk was
2 at the time?

3 A. No.

4 Q. Sitting here today, do you know
5 who he is?

6 A. Just that he's a prosecutor.
7 And I think he probably was in the current
8 office at the time. I don't know if he was
9 former or not, but.

10 Q. Were you aware that Mr. Kulyk,
11 or at least it's been reported that
12 Mr. Kulyk was assisting Rudy Giuliani in
13 uncovering information about President
14 Biden and his family's dealings in Ukraine?

15 A. I wasn't aware of that.

16 Q. Would it surprise you to learn
17 that?

18 A. No, because I think Lev was
19 working with Giuliani and they had a film
20 crew going over there. That's why I left
21 that meeting, because they were planning on
22 some trip and filming stuff to do a
23 documentary on Ukraine and the Biden family
24 and the firings and all that.

25 Q. About that film, did you have

1 an understanding of what the purpose of
2 that documentary film was?

3 A. No, I didn't participate in
4 those decisions or any real discussion
5 there. I left. There's a lot of things
6 going on that you only have so much
7 bandwidth.

8 And on the other side of the
9 aisle, I was tracking and responding to
10 Adam Schiff and others there putting out
11 false information about Russia and Trump
12 still. And they continued that through the
13 whole four years. And Adam continues to
14 assert that he had classified information
15 that he can't share. But when we did the
16 depositions of all those intelligence
17 officials, none of them had anything.

18 Q. Mm-hmm.

19 A. And we released all those
20 depositions I believe.

21 Q. Did you ever interview
22 Mr. Kulyk?

23 A. I don't think so. I think I
24 only did the one interview. And I think it
25 was represented as Mr. Shokin. It might

1 staffer, was that Adam Schiff was using
2 every means possible to him to undercut
3 Chairman Nunes and to go after Donald Trump
4 and some other personages in the Republican
5 administration. With ungrounded, false
6 information, apart from just pure policy
7 focus differences. Differences about what
8 authority should go into a bill, what sort
9 of resources should go into a bill. Those
10 disagreements are part and parcel and you
11 can work through. But when you personalize
12 everything the way Adam Schiff and Mr.
13 Heinz did, it creates an environment that
14 is not conducive to building camaraderie.

15 MR. CHASE: Ali, can you put up
16 the original subpoena to Mr. Harvey?
17 And if you go to page 10, that would
18 be good.

19 MS. SETTELMAYER: And we're on
20 Exhibit 50.

21 MR. CHASE: Yes, we're going to
22 mark this as Exhibit 50. Thank you.

23 (Whereupon, Original Subpoena
24 was marked as Harvey Exhibit 50 for
25 identification as of this date by the

1 Reporter.)

2 Q. This is the original subpoena
3 to testify at a deposition in a civil
4 action to Derek Harvey, service was
5 accepted by Steven Biss back in June of
6 2023. I guess before we go to page 10 --

7 A. I never saw this. I never saw
8 this.

9 Q. You anticipated my question,
10 which is have you ever seen this before?

11 A. I've never seen this. And
12 Mr. Biss never informed me that I had a
13 subpoena. And he made me aware that I may
14 be -- I may be asked to provide some
15 testimony at some point in time in the
16 future. So I never saw this.

17 Q. Well, I could represent to you
18 that he accepted it on your behalf, whether
19 or not he had your authority.

20 A. I wasn't paying him for this,
21 so -- he wasn't retained for this from me,
22 so.

23 Q. Understood. Obviously, this is
24 your first time reading it.

25 MR. CHASE: I apologize. Let's

1 go down to page 10, Ali.

2 Q. Mr. Pappas, there's a bunch of
3 document requests attached here which we
4 can talk about in a bit. But Exhibit 1 to
5 the subpoena is a copy of the operative
6 complaint in this action. It's the second
7 amended complaint filed by Mr. Nunes
8 against NBCUniversal.

9 Have you seen this before?

10 A. I don't think I have.

11 Q. Let's go down to paragraph 13
12 of this. I'm not going to force you to
13 read through every allegation in here, but
14 Mr. Harvey, in here Mr. Nunes says, "In
15 fact, on December 11, 2019" --

16 A. Is this in that letter there?

17 Q. Well, this is above the letter.
18 But the letter is ultimately what I'm going
19 to be asking you about.

20 A. Okay.

21 Q. It says, "In fact, on
22 December 11, 2019, plaintiff advised the
23 Attorney General of the United States,
24 William P. Barr, and the criminal division
25 of the Department of Justice as follows."

1 Q. Mr. Langer certainly does,
2 correct?

3 A. Yeah, Jack will -- it's his
4 press guy, and he can make decisions about
5 who to respond to or not, you know? So.
6 I'm not involved in that, but, you know.

7 Q. All right, maybe we can move
8 along from this.

9 MR. CHASE: Why don't we take a
10 quick break.

11 A. I need a little break anyway.

12 THE VIDEOGRAPHER: Going off
13 the record. The time is 2:28 p.m.
14 Eastern time.

15 (Whereupon, a short recess was
16 taken.)

17 THE VIDEOGRAPHER: The time is
18 2:39 p.m. Eastern time. We're back
19 on the record.

20 BY MR. CHASE:

21 Q. Hi, Mr. Harvey. One question I
22 forgot to ask you to close the loop here.
23 Do you recall ever speaking or otherwise
24 communicating with Andrii Derkach?

25 A. No.

1 Q. You don't recall one way or the
2 other?

3 A. Don't think I ever did.

4 Q. So moving along to other topics
5 here, Mr. Harvey, somewhat mundane topics,
6 but here we go.

7 What was your e-mail address
8 when you worked for HPSCI, do you recall?

9 A. At HPSCI?

10 Q. Yes.

11 A. I just think it was first and
12 last name at whatever it was. Just first
13 and last name. Derek Harvey.

14 Q. Did you use that e-mail address
15 to communicate with Mr. Nunes at all?

16 A. No. Maybe once in a great
17 while, but generally not.

18 Q. How would you typically
19 communicate with Mr. Nunes?

20 A. In person.

21 Q. Would you text message with him
22 at all?

23 A. Occasionally. Very rarely.

24 Q. What about with other staffers
25 in HPSCI, how would you typically

1 communicate?

2 A. Staffers that were below George
3 and me?

4 Q. Yes.

5 A. And Alan Souza? Via e-mail.
6 Or in person. Usually in person.

7 Q. And with Mr. Pappas and
8 Mr. Souza, how would you communicate with
9 them generally? What means of
10 communication?

11 A. Generally one-on-one or the
12 three of us or others doing planning.
13 Maybe over lunch, grab a cup of coffee.

14 Q. During the COVID pandemic, did
15 things change in how you communicated? Did
16 you communicate more electronically at that
17 point?

18 A. Nope.

19 Q. No? Mostly in person still?

20 A. We were in there full speed
21 ahead.

22 Q. Do you currently have access to
23 your work e-mail that you used while
24 working at HPSCI?

25 A. No, I've not had access to

1 anything since February of '22 I guess.

2 Q. I can represent to you that
3 Mr. Nunes filed this lawsuit in August of
4 2021. Do you recall ever receiving a
5 litigation hold notice in connection with
6 this case?

7 A. I may have. I don't know. I
8 haven't deleted anything. I don't delete
9 stuff. I've got numerous other things that
10 I'm maintaining everything for.

11 Q. But you don't recall getting --
12 let me put it this way. Who is in control
13 of your work -- your HPSCI e-mail address?
14 Who is the custodian for that?

15 A. That would be the House of
16 Representatives. And I think we got --
17 don't we have a lawyer here from HPSCI?

18 Q. We do.

19 A. I think he could answer that.

20 Q. But you don't recall personally
21 receiving a litigation hold notice from
22 Mr. Nunes, do you?

23 A. I don't recall. I may have.
24 But if I looked at it, I don't delete stuff
25 anyway.

1 Q. Except for the House e-mail
2 account. You obviously didn't delete --

3 A. I didn't delete. I left and
4 hopefully it's all there.

5 Q. Did you ever search for
6 relevant e-mails for this case on any of
7 your e-mail accounts that you currently
8 have access to?

9 A. Nope, not at all.

10 Q. Were you ever instructed to?

11 A. No.

12 Q. Did you ever search your text
13 messages?

14 A. Not for this case. I looked at
15 a couple text messages way back when, when
16 Lev popped up in the news, but that was it.
17 Just to take a look at those. Very
18 innocuous.

19 Q. Which text messages were those?

20 A. When I met him and going to
21 Capitol Hill Club. That type of thing.

22 Q. Were they the text messages we
23 looked at earlier or were they something
24 else?

25 A. Well, I think it was what you

1 showed me. But I might have had one or two
2 others. I mean, I can look but I don't
3 think there's -- no, Lev was a guy --
4 didn't see anything there. Lev was a guy
5 for, you know, protocols. That's why I
6 guess I had to go on WhatsApp. If I have
7 it -- I don't think I have WhatsApp on this
8 phone.

9 Q. That was on your work phone
10 that you had that?

11 A. Yes.

12 Q. Which I guess brings me to my
13 next question. You had a cellphone that
14 was issued to you as part of your job
15 working for HPSCI?

16 A. Yes.

17 Q. And I assume you no longer have
18 access to that phone.

19 A. No.

20 Q. And you lost access to that
21 phone in February of 2022?

22 A. Yes. If we get access to it, I
23 have got lots of pictures on there that I
24 shouldn't have taken from that phone, so I
25 should get them back.

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1 Q. So it's safe to say that at no
2 point have you searched for any documents
3 on any device or electronic account in
4 connection with this case, correct?

5 A. No, and I would suggest that
6 there's probably hardly anything there.

7 Q. But there might be.

8 A. There might be.

9 Q. Were you aware that Mr. Nunes
10 filed this lawsuit in August of 2021?

11 A. I wasn't aware of it when he
12 filed it.

13 Q. When did you become aware of
14 it?

15 A. I have really no idea. There
16 might have been -- when I filed the suit
17 against CNN, it's probably when I found out
18 about this one.

19 Q. You filed a suit against CNN?

20 A. (The witness nods.)

21 Q. When was that?

22 A. Hmm, probably '21.

23 Q. Who represented you in that
24 lawsuit?

25 A. Steve.

1 Q. Steven Biss?

2 A. Mm-hmm.

3 Q. What was that lawsuit about?

4 A. Oh, how they characterized me
5 incorrectly, calling me a traitor and stuff
6 like that.

7 Q. In connection with what?

8 A. I forget.

9 Q. You forget? You filed a
10 lawsuit about it.

11 A. I forget. I'd have to go back.
12 I mean, it was probably even earlier than
13 that actually.

14 Q. What was the outcome of that
15 lawsuit?

16 A. It went back and forth to
17 appeals courts, back down, appeals courts,
18 back up. And last time I had seen it, Biss
19 was looking at filing because it got pushed
20 back down to us, rejected the CNN claim,
21 and I had to make a decision whether I
22 wanted to keep going on this stuff after a
23 couple of years.

24 Q. And you chose not to?

25 A. I chose not to.

1 Q. Any particular reason why?

2 A. They wore me out.

3 Q. Understood. But you had made
4 that decision before Mr. Biss fell ill, is
5 that correct?

6 A. No, no, I'd not made that
7 decision then. I was going to be in a
8 conundrum. I'd have to find a new lawyer
9 and all that. Stars weren't aligning
10 right, and I said...

11 Q. Did Mr. Biss -- have you
12 preserved documents in connection with that
13 case?

14 A. With the CNN case?

15 Q. Correct.

16 A. I don't know if he did or not.
17 I don't think so. And I don't think CNN
18 asked me to either.

19 Q. At the time that you filed --
20 well, let me ask this. Did your lawsuit
21 against CNN concern your work while you
22 were on HPSCI? Or you were a staffer on
23 HPSCI?

24 A. My recollection, it wasn't on
25 HPSCI.

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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF DELAWARE)

I, SUZANNE PASTOR, a Notary Public for and
within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given
by that witness.

I further certify that I am not related to
any of the parties to this action by blood or by
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this day, September 20, 2024.



SUZANNE PASTOR